IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.581 OF 2005

Smt.Rahimatbi Babulal Saiyad and Ors.... Appellants
Versus
Rangu Kondiba Shinde since deceased
through legal heirs
1.Subhadra Rangu Shinde and Anr. ... Respondents

Mr.U.B.Nighot for appellants
Mr.R.A.Thorat i/bn Dilip Bodake for respondent nos.1 & 2

CORAM : P.V.KAKADE, J.

DATE : 5TH SEPTEMBER, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge Satara confirming the judgment and order passed by the Civil Judge, Junior Division, Satara dated 4.1.1994 decreeing the suit for specific performance filed by the plaintiff.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for specific

performance of the contract i.e. for the execution of reconveyance deed from the Defendants and for possession of the suit property along with future mesne profit. The plaintiff came with the case that he was the owner of the suit land and he executed a sale deed in favour of one Babulal Gulab Saiyad of the suit land for consideration of Rs.1500/=. On the same day Babulal executed the agreement for reconveyance of the suit land in favour of the plaintiff. As per this agreement it was decided that if the plaintiff would return the amount of Rs.1500/= after the period of 10 years, Babulal should re-execute the sale deed of the suit land in favour of the plaintiff. On the day of execution of the sale deed and the execution of the agreement, the possession of the suit land was delivered to Babulal, who died in the year 1988. The defendants are the only heirs of Babulal. On 10.2.1989 the plaintiff had issued notice to the defendants offering them amount of Rs.1500/= and requesting them to execute the sale deed of the suit land in favour of the plaintiff. It was alleged that the plaintiff was ready and willing to perform his part of contract, and therefore, the notice was issued. It was not complied with and hence the suit came to be filed. The defendants contested the suit,

inter alia, submitting that Babulal executed the agreement of reconveyance, however, according to the defendants the plaintiff executed agreement for sale in favour of deceased Babulal on 25.3.1984. Deceased Babulal on the same day paid Rs.16000/= to the plaintiffs towards consideration of the land and due to the said act of the plaintiff, plaintiff himself is said to have cancelled the agreement of the year 1979, on such and other grounds the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that deceased Babulal executed an agreement in favour of the plaintiff and thereby agreed to reconveyance the property. The suit was also to be held within limitation. It was further held that the defendants failed to prove that the plaintiff had cancelled the agreement of the year 1979 and as such the suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concurred with the findings recorded by the learned trial judge and dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that the lower appellate court erred in holding that there was no reference to Agreement of Reconveyance of the year 1979 in subsequent agreement dated 25.3.1984 therefore, it cannot be said that there was novation of contract. In this regard it must be noted that both the courts below have appreciated the evidence in proper perspective holding that when there were two contracts which were inconsistent and could not stands together the old contract could not be substituted by new contract of the year 1984, and therefore, theory of novation as contemplated under Section 62 of the Contract Act could not be applied to the present set of fact. It was further submitted that the suit property was not identifiable in view of the fact that subsequent consolidation proceeding was effected. In this regard the lower appellate court has rightly observed that the documents on record were sufficient to show that the plaintiff had amended the plaint and as per the subdivision the area of suit land was reduced to 38R land and 7x12 extract document

demonstrated the subdivision and therefore, the area of suit land came to 38R which was identifiable and claim of the plaintiff was restricted from 56R to 38R land, which was the property available for specific performance. I do not see any illegality in the reasoning adopted by both the courts below, and therefore, hold that the concurrent findings recorded by both the courts below appear to be just, legal and proper and therefore, it would brook no interference by this Court.

5. In the result the appeal stands dismissed with no order as to costs. Consequently Civil Application No.1012 of 2005 also stands dismissed with no order as to costs.